

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

J A FARM LABOR, INC.
336 W. El Monte
Dinuba, CA 93618

Employer

Docket No. 02-R2D5-9108

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by J. A. Farm Labor, Inc. (Employer).

JURISDICTION

On May 2, 2001, a representative of the Division of Occupational Safety and Health (the Division) conducted an inspection at a place of employment maintained by Employer at South of Carruthers, Kingsburg, California.

On November 1, 2001, the Division issued a citation to Employer for a serious violation of section 3457(c)(1)(A) [drinking water] of the occupational safety and health standards and orders found in Title 8, California Code of Regulations.¹

Employer received the citations on November 3, 2001 and filed an appeal with the Appeals Board on December 10, 2001. The time limit for filing an appeal from a citation is 15 working days from receipt of the citations. (Labor Code §§ 6319(a), 6600.) The deadline for Employer to appeal was November 28, 2001. Employer's appeal was filed 12 days late.

On February 19, 2002, Employer submitted a letter of explanation for their late filed appeal. (See §359(b) & (c).) On August 28, 2002 the Board found that Employer had not provided good cause for filing the appeal 12 days late and issued an Order Denying Late Appeal on that date.

On August 18, 2003, Employer filed a petition for reconsideration after receiving a notice of unpaid civil penalties from the Department of Industrial

¹ Unless otherwise specified all references are to sections of Title 8, California Code of Regulations.

Relations, Division of Administration/Accounting. Employer's petition alleges that the citation was issued long after (nearly 6 months) the alleged violation, its president was uncertain of the policies and procedures for appealing a citation, and that there is evidence that all employees were informed where the other water container was located at the site.

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

Labor Code section 6614(a) sets forth the deadline for filing a petition for reconsideration from an Administrative Law Judge's (ALJ) decision or an order of the Board:

At any time within 30 days after the service of any final order or decision made and filed by the appeals board or a hearing officer, any [aggrieved] party . . . may petition the appeals board for reconsideration Such petition shall be made only within the time and in the manner specified in this chapter.

A regulation of the Board provides that "[t]he petition for reconsideration shall be filed at the Appeals Board in Sacramento, California, and shall be deemed filed on the date it is delivered or mailed to the Appeals Board." (Title 8, Cal. Code Regs. § 390(a).)

In the present case, the order denying late appeal was served by mail on the parties on August 28, 2002. Because the order was served by mail, the time for filing a petition was extended by 5 days. (See § 348(a).) Thus, the last day to file a petition for reconsideration challenging the order was October 2, 2002, which was 35 days after service of the order. The petition for reconsideration filed by Employer *over eleven months later* on August 18, 2003, was well past the statutory deadline.

Longstanding Board precedent establishes that the Board does not have jurisdiction to accept the petition. The Board has consistently held that the requirement that a petition for reconsideration be mailed or delivered to the Board within 30 days of the issuance of the decision or order to be reconsidered is jurisdictional and the Board is without power to enlarge the time for the filing of a petition for reconsideration. (*Unocal Corporation*, Cal/OSHA App. 92-639, Denial of Petition for Reconsideration (May 13, 1993) citing *Dalton Construction Company*, Cal/OSHA App. 83-987, Denial of Petition for Reconsideration (Feb. 7, 1985).) The deadline for filing a petition for reconsideration is jurisdictional and even a petition filed one day beyond the deadline must be denied. (See *Beutler Heating & Air Conditioning, Inc.*, Cal/OSHA App. 93-2220, Denial of Petition for Reconsideration (Mar. 16, 1995) and *Edwin D. Chapman*, Cal/OSHA App. 81-331, Denial of Petition for Reconsideration (Oct. 1, 1981).)

The courts and other adjudicatory agencies have reached the same conclusion when interpreting similar statutory filing deadlines. It is well established that if a time limitation for filing a document with an agency is jurisdictional, and a document is filed beyond the time limit, neither the agency nor a court may grant relief since they lack jurisdiction over the matter. See *Humbert v. Castro Valley County Fire Protection Dist.* (1963) 214 Cal.App.2d 1, 9.)

The Board finds that Employer did not file its petition for reconsideration within the statutorily prescribed time. Therefore, the Board is without jurisdiction to review the order issued August 28, 2002. Accordingly, the order denying late appeal is final and not subject to review by any court or agency.²

DECISION

Based upon the above, the petition for reconsideration is denied as untimely. The Board has no jurisdiction to re-open the now final Order Denying Late Appeal.

MARCY V. SAUNDERS, Member
GERALD PAYTON O'HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: October 7, 2003

² Section 390.3(a) states: "[i]f within 30 days of the filing of an order or decision no petition for reconsideration has been filed, and no reconsideration has been ordered on the Appeals Board's own motion, the order or decision is a *final order* of the Appeals Board and not subject to review by any court or agency." (Italics added.)